

December 9, 2013

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative regarding vehicle-related consumer protection laws (A.G. File No. 13-0033).

Background

Vehicle-Related Consumer Protection Laws. Current state law requires written warranties of at least 30 days or 1,000 miles, whichever occurs first, on used vehicles sold by “buy-here-pay-here” dealers. Buy-here-pay-here dealers are the relatively small share of car dealers that typically provide their own financing to customers rather than working with third-party lending institutions. Current state law also restricts the payments that car dealers can collect for arranging or assigning loans to a maximum 2.5 percentage points of the finance charge, with the maximum rate depending on the length of the loan. In addition, the existing state New Motor Vehicle Board holds hearings and makes decisions to resolve disputes between the public and car dealers, manufacturers, and distributors. For example, the board is statutorily responsible to hear appeals in cases where such entities were disciplined by the Department of Motor Vehicles (DMV) for violations of laws or regulations intended to protect the public.

Taxes Associated With Vehicle Sales. The sale of vehicles directly or indirectly affects state and local tax revenues. In particular, the sales tax and vehicle license fee are collected on the sale price or market value of vehicles. In addition, the profits of car dealers and financial institutions affect the state’s income and corporation tax revenues. As a result, changes to the vehicle industry can have a significant effect on state and local government revenues. For example, in 2011, new and used car dealers generated \$39 billion and \$6 billion in taxable sales, respectively. Together, these dealers produced roughly \$4 billion in sales tax revenues for state and local governments. The vehicle industry’s contributions to other state and local revenue sources are significant but difficult to quantify.

Proposal

This measure has a number of provisions that generally increase vehicle-related consumer protection.

Requires Warranties on All Used Vehicles Sold by All Dealers. The measure expands the current 30 day or 1,000 mile warranty requirement to cover every used vehicle sold by any car dealer. The measure specifies the components of the vehicle that must be covered by the warranty. The measure also specifies that the dealer can choose to pay the full cost of repairs covered by the warranty or refund the purchase price of the vehicle (less a reasonable amount for any damage to the vehicle since the purchase) to the consumer.

Requires Safety Recall Repairs. The measure prohibits car dealers and rental car companies from selling or leasing a used vehicle if they knew or should have known that the vehicle was subject to a manufacturer's safety recall without first making the repair. This provision does not apply to the sale of used vehicles by private sellers or between car dealers, rental companies, or manufacturers.

Prohibits Certain Payments Related to Vehicle Loans. The measure prohibits vehicle sellers from receiving any payment that varies based on the interest rate or finance charge for arranging, assigning, or transferring a car loan.

Limits Changes to Sales Contracts After Purchase. The measure prohibits a car dealer from including contract provisions that allow the dealer to cancel or change the terms of the contract after the buyer has signed the contract and taken possession of the vehicle. It further prohibits a dealer from engaging in "high-pressure tactics" (such as threatening to repossess the vehicle) to induce the buyer to alter the contract in a way that would increase the cost to the buyer.

Provides the Ability to File Lawsuits Related to Identity Theft. The measure allows a person whose identity has been stolen and used to purchase a vehicle to sue the dealer that sold the vehicle or the entity attempting to collect a debt related to the sale. The provision applies even if the dealer has transferred the loan to a third party. The measure allows the victim of identity theft to seek damages of up to \$60,000 in addition to any actual damages or attorney fees resulting from the identity theft and vehicle sale.

Requires Employee Background Checks. The measure requires a car dealer to check the criminal records of an employee who will have access to personal identifying information of customers purchasing or leasing a vehicle or applying for credit. The measure also prohibits a dealer from employing anyone in a position with access to the personal identifying information of these customers if the dealer knew or should have known that the employee was convicted of identity theft, false impersonation, fraud, or forgery.

Alters Appeals Process for Disciplinary Actions Against Dealers. The measure eliminates the New Motor Vehicle Board's role in hearing appeals in cases where dealers, manufacturers, distributors, or their branches were disciplined by the DMV for violations of laws or regulations intended to protect the public. Instead, these appeals, which have historically been rare, could only be made in the state court system.

Fiscal Effects

This measure would likely have various fiscal effects on state and local governments, many of which are subject to substantial uncertainty.

Effect on Taxes Associated With Vehicles. This measure could alter the vehicle industry in significant ways, affecting dealers' profits, dealers' employees' incomes, and prices and quantities of vehicles sold, and, therefore, the amount of tax revenue collected by state and local governments. Because the vehicle industry is a large generator of state and local tax revenues, these fiscal effects have the potential to be substantial. However, despite this potential, the magnitude of these possible effects is unclear, as is whether the net result would be increased or decreased tax revenues. This uncertainty is because the various provisions of the measure could have different effects, in part, depending on how the industry and consumers respond. For instance, the measure's provision prohibiting certain payments related to car loans would likely reduce a source of profit for some car dealers, which could result in some reduction in tax revenues. In some cases, however, car dealers might increase the price of vehicles or charge fees to offset the loss in financing profits. The price increases or new fees could be higher or lower than the existing payments, and thus the effect on dealer profits and tax revenues is uncertain.

In addition, some provisions of the measure generally increase costs and financial risk for car dealers. For example, the requirement to provide warranties on all used cars sold by dealers would result in additional costs to purchase warranties from third parties, repair vehicles before sale, or repair vehicles when new owners bring the vehicles back during the warranty period. At least some of the additional costs to car dealers would likely be passed on to customers in the form of higher prices, which would increase sales tax revenues associated with these sales. Increased prices, however, would lead some customers to change their buying decisions such as by purchasing fewer cars, which would reduce sales tax revenues. Customers could also purchase more used cars from private parties rather than dealers, which could reduce sales tax revenues because private party transaction prices tend to be lower and potentially easier to underreport. On the other hand, to the degree that this measure provides protections that consumers value, improved consumer confidence could increase, offsetting the reduction in car sales and associated taxes from dealerships. Furthermore, these provisions could also affect revenue from a variety of other taxes.

Effect on Enforcement and Adjudication Costs. The measure creates a number of new legal requirements for car dealers. Consequently, state courts would likely experience some additional caseload associated with hearing civil cases brought by consumers alleging violations by dealers. Also, the DMV could experience some additional workload associated with conducting investigations and enforcement actions related to allegations of violations of these requirements. These court and DMV costs will likely not be significant.

Summary of Fiscal Effects. This measure would have the following major fiscal effect:

- Unknown but potentially significant net effect on state and local government revenues resulting from changes affecting the sale and financing of vehicles.

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance